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May 30, 2012

VIA ELECTRONIC FILING

Hon. Marilyn D. Go, United States Magistrate Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

RE: State Farm Mut. Auto. Ins. Co. v. Accurate Med. (1:07-cv-00051-ENV-MDG)

Dear Magistrate Judge Go:

We represent Plaintiff, State Farm Mutual Automobile Insurance Company (“State Farm”), and write to respond briefly to the Pawlowski Defendants’ letter to the Court of today’s date (Dkt. No. 125) regarding their renewed request to move for contempt, which this Court previously denied in March after they raised the same arguments. (3/12/12 Order.)

State Farm respectfully submits that the Pawlowski Defendants’ newest letter is improper for multiple reasons. First, while their letter dated May 21, 2012 (Dkt. No. 122) appeared to deride this Court’s ruling in March denying their prior request to move for contempt as lacking “logic [] or ... a sense of judicial economy” (*id.* p. 3), the Pawlowski Defendants’ letter of today now resorts to engaging in inappropriate attacks on the undersigned counsel. Bizarrely, the Pawlowski Defendants’ letter appears to question our personal “creditability [sic]” for accurately and appropriately stating that in 2011 the Pawlowski Defendants agreed not to dispute charges of fraud that are identical to the fraud State Farm alleged against them here. (*See* Dkt. No. 125 (inappropriately disparaging counsel and querying, “How can an attorney who conducts himself/herself in such a way expect to retain any creditability [sic] before the Court?”).) Second, State Farm does not read the individual rules of Judge Vitaliano or Your Honor to permit a reply letter in further support of a request for approval to file a motion, rendering the Pawlowski Defendants’ letter wholly improper. Third, the Pawlowski Defendants’ letter contains further additional argument regarding the motions that are already under consideration and pursuant to which five briefs have already been submitted, and therefore constitutes an improper “sur-sur-reply.” (*See e.g.*, 2/24/12 Minute Entry; *see also* Dkt. No. 122 at p.2 n.1.) Fourth, their letter is inconsistent with the rules prohibiting the submission of correspondence between counsel, except when formally annexed to pleadings or motion papers.

In short, the Pawlowski Defendants’ attempt to once again move for contempt sanctions and distract the Court speaks to their inability to formulate any viable response to the showing that State Farm made in its motion that the document destruction provision should be declared

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void and unenforceable as a matter of law as violative of New York law and its public policy against insurance fraud, barring any request for relief based on such provision. For all of the reasons previously established, the Pawlowski Defendants' renewed request to file a motion for contempt against State Farm should be denied again. (*See* Dkt. Nos. 103, 122; 3/12/12 Order.) Furthermore, since the Pawlowski Defendants chose to improperly place in the public court file their inappropriate and charged letter to counsel, State Farm also attaches its short response to counsel here.

Thank you for the Court's time and attention, and we regret the necessity of burdening the Court with further correspondence on this issue.

Respectfully submitted,

/s/ Sheila L. Birnbaum

Sheila L. Birnbaum

Douglas E. Fleming III

Counsel for State Farm Mutual Automobile Ins. Co.

Attachment

cc: Steven Talan/Wolodymyr Starosolsky (via electronic filing and electronic mail)

EXHIBIT 1

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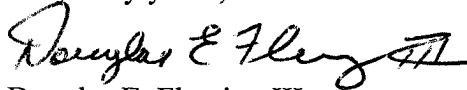
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RE: State Farm Mut. Auto. Ins. Co. v. Accurate Med. (1:07-cv-00051-ENV-MDG)

Dear Wolodymyr:

I received the Pawlowski Defendants' May 25, 2012 letter yesterday, requesting that State Farm Mutual Automobile Insurance Company ("State Farm") "withdraw or . . . have stricken" any portions of State Farm's filings that "implicat[e]" the Pawlowski Defendants "in any misconduct." The Pawlowski Defendants' letter argues that unspecified references in State Farm's papers to the Pawlowski Defendants' misconduct are "not relevant to the court's disposition of this proceeding" and are "inflammatory" and "improper." We are perplexed by this request. To the extent that State Farm even understands the portions of its papers to which the Pawlowski Defendants are referring, State Farm strongly disagrees. As set forth more fully in State Farm's papers, references to the Pawlowski Defendants' misconduct are entirely proper and relevant to this matter, including references to the Pawlowski Defendants' pleas to New York in 2011, in which the Pawlowski Defendants agreed not to contest the same fraud charge State Farm made against them here and further agreed to submit to substantial penalties.

Very truly yours,



Douglas E. Fleming III

cc: Steven Talan (via electronic mail)